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October 31, 1997

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Office of the Secretary
Federal Communications Commission
1919 M. Street, N.W.
Washington, D.C. 20544

FCC MAIL ROOM

RE: Comments On Notes Of Proposed Rule Making: MM Docket No. 97-182

Dear Mr. Secretary:

As Chief Pilot of Dot Foods' Aviation Department, I feel it would be a mistake for the FCC to assume preemptive powers over the state and local government with regards to the regulation of communication tower location and height. Not only would you likely face defeat before the federal appellate court if this action were taken, this issue has the potential to seriously compromise aviation safety.

The FAA will not place limits on tower height or placement; so, it is up to local and state airport authorities to regulate these structures. The aviation community, as well as the general public, demands there be no impediments to aviation safety. These demands are louder and of greater urgency than the arguments of the digital television and other broadcasters. It is in the best interest of everyone that they not be allowed to place their towers wherever it may be convenient.

Sincerely,

A handwritten signature in cursive script that reads "Matthew R. Scheldt".

Matthew R. Scheldt
Chief Pilot

MS:pb

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Headquarters
P.O. Box 192, Mt. Sterling, IL 62353, 217-773-4411
www.dotfoods.com

16305 Swingley Ridge Road, Suite 201, Chesterfield, MO 63017, 314-537-4002, Fax 314-537-5519
16301 Elliott Parkway, Williamsport, MD 21795, 301-416-3200, Fax 301-416-3207
2220 Williams Drive, Modesto, CA 95358, 209-581-0000, Fax 209-581-0082



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W. Crosby Few Chairman
Arthenia L. Joyner Vice Chairman
Stella Ferguson Thayer Secretary
Hillsborough County Commissioner Chris Hart Treasurer
City of Tampa Mayor Dick A. Greco Assistant Secretary/Assistant Treasurer

October 30, 1997

Mr. William F. Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
Washington DC 20554

RE: Notice of Proposed Rule Making: MM Docket No. 97-182
Preemption of State and Local Zoning and Land Use Restrictions on Siting
Placement and Construction of Broadcast Station Transmission Facilities

Dear Secretary Caton:

In response to the above referenced Notice of Proposed Rule Making, the Hillsborough County Aviation Authority is greatly concerned with the preemption of local authority to regulate the siting, placement or construction of any structures (including broadcast antenna facilities) that penetrate the navigable airspace.

Attached please find the Florida Department of Transportation's response correspondence, dated October 21, 1997, regarding this issue. The Hillsborough County Aviation Authority is wholeheartedly in full agreement with the State's stance.

Thank you for your consideration.

Sincerely,

James E. Johnson, A.A.E.
Senior Director of Airport Operations

cc: William Ashebaker, State Aviation Manager, FDOT
Stewart Eggert, Allen, Dell, Frank & Trinkle

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Louis E. Miller Executive Director

Hillsborough County Aviation Authority P.O. Box 22287, Tampa, Florida 33622 phone 813-870-8700 fax 813-875-6670 web site <http://TampaAirport.com>
Peter O. Knight Airport Plant City Airport Vandenberg Airport

**Mail Station 46
(850)414-4500**

October 21, 1997

**Mr. William F. Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554**

**Re: Notice of Proposed Rule Making; MM Docket No. 97-182
In the Matter of:
Preemption of State and Local Zoning and Land Use Restrictions on the Siting,
Placement and Construction of Broadcast Station Transmission Facilities**

Dear Secretary Caton:

The Florida Department of Transportation strongly objects to the preemption of this state's authority to regulate the siting, placement or construction of any structure including broadcast station transmission facilities, that penetrate the navigable airspace necessary for safe and efficient use of the state's public aviation transportation system.

The Florida legislature has long recognized that a viable system of public aviation facilities and the airspace necessary to efficiently operate them is of vital importance to our state's economy. Consequently, our legislature enacted state laws allowing funding of aviation system capacity improvements. In the past five years alone, the State of Florida has invested nearly \$430 million as its share to preserve and expand the state aviation system.

In order to protect our investment, Florida also enacted comprehensive land use planning and aviation compatible land use legislation that specifically requires controls for structure heights and land uses that are incompatible with normal aviation operations or that jeopardize the public's health, safety or welfare. Enforcement responsibility is shared by the Florida Department of Transportation and local governments under adopted airport zoning ordinances and comprehensive land use plans. The purpose of these statutory controls is to preserve the safe, efficient use of the state's aviation transportation system and to protect our substantial investment of federal, state and local public funds.

Further, the Federal Aviation Administration (FAA) requires protection of the federal government's invested public funds. The sponsors of airports developed by or improved with federal funds are obligated to prevent obstructions in the aerial

Mr. William F. Caton
October 21, 1997
Page Two

approaches to the airport. Obstructions are as defined in Federal Aviation Regulations (FAR), Part 77, Objects Affecting Navigable Airspace. For grants to airports acquired under P.L. 80-289, amending The Surplus Property Act of 1944, assurances are required that actions including zoning will be taken to restrict land uses in the vicinity of airports to uses compatible with normal airport operation. Under provisions of the Airport and Airway Safety and Capacity Expansion Act of 1987 (P.L. 100-223) and earlier federal airport improvement funding programs, airports must make the obligation to prevent obstructions in writing as a condition of fund grants. The majority of Florida's 103 publicly owned airports fall in these categories.

FAR, Part 77, requires construction notification for proposed structures and establishes height standards above which objects would be obstructions to air navigation. It provides the FAA authority to determine the impact of proposed structures, including broadcast station transmission facilities, on aeronautical operations. The Part does not grant the FAA authority to permit or deny construction of any object nor does it provide the FAA any regulatory control of structure height, location or use. While the FAA controls and regulates aeronautical operations, it has no regulatory authority to protect airports, airspace or flight operations from structures that penetrate navigable airspace, would impact flight operations or would interfere with the safe or efficient use of aviation facilities. This is a specifically defined responsibility of state and local government. In Florida, this responsibility is actively exercised through the statutory controls protecting the state public aviation transportation system enacted by the legislature.

Preemption of Florida's authority to regulate the siting, placement or construction of broadcast station transmission facilities that penetrate navigable airspace would adversely impact the state's public aviation transportation system in two ways. First, an object that exceeds obstruction standards can affect the safety of flight operations as well as persons in, on or near the object should an aircraft collide with it. Second, an object that penetrates navigable airspace, particularly airport terminal area airspace, will decrease the area aircraft have available for taking off, maneuvering or landing. In turn, this requires flight restrictions and operations or procedures to be modified to accommodate the object safely. These type accommodations limit and degrade aviation operating capabilities resulting in decreased airport and system capacities.

Thus, an object that penetrates en route or airport terminal area airspace jeopardizes the investment of public funds in our aviation transportation system. Where these public funds include federal grants, preemption of the local government zoning control by the Federal Communications Commission (FCC) could place the local government in default of its grant assurance required by the FAA.

Mr. William F. Caton
October 21, 1997
Page Three

We wish to respectfully point out that the mandated role of the FCC is management of a national system of communications in its wide variety of applications. This role does not equip the Commission or its staff with the aeronautical expertise to evaluate the impact a proposed structure will have on existing or planned aeronautical activity. Florida's airspace protection and compatible land use statutes require the Department of Transportation to be proficient in this area of expertise, use it in executing its permit authority and assist local governments on request.

We recognize the importance of a viable radio and television broadcast system and the public interest these media services serve on a national as well as international basis. We also recognize that these services are, in the main, provided by private, venture capital organizations in a highly competitive and profitable market arena. The most lucrative broadcast markets are those with the greatest population densities that also require the more extensive aviation transportation system capabilities and thus create conflicts between the two systems needs. When these type conflicts occur, we do not believe it was the intent of the Congress that they be resolved at the expense of public investment in its transportation infrastructure or the safety of the system.

The safety of the state's public transportation system is the paramount concern of the Florida Department of Transportation.

Sincerely,

William J. Ashbaker, P.E.
State Aviation Manager

WJA/ajr

cc: Aircraft Owners and Pilots Association
Florida Airport Managers Association
Florida League of Cities
Florida Association of Counties
National Association of State Aviation Officials



The Adirondack Council

CHURCH STREET PO BOX D-2 ELIZABETHTOWN, NEW YORK 12932-0640 TEL. (518) 873-2240 FAX (518) 873-6675

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*Dedicated to the preservation
and enhancement
of New York State's
six-million-acre Adirondack Park*

October 30, 1997

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Federal Communications Commission
Re: FCC 97-296 (MM Docket No. 97-182)
Washington, DC 20554

Re: FCC 97-296 (Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities.)

Dear Sir or Madam:

The Adirondack Council is an 18,000-member research, education and advocacy organization working to preserve and protect the natural resources of New York State's Adirondack Park. The Council represents the Adirondack interests of the National Parks and Conservation Association, The Wilderness Society, Citizens Campaign for the Environment and the Natural Resources Defense Council, with combined memberships of over one million.

The Adirondack Park is a unique six-million-acre patchwork mix of publicly and privately held lands (roughly 50-50) that occupies one-fifth of the land area of New York State. The public lands are protected by Article XIV of the New York State Constitution which states, in part:

"The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed."

This article has been in existence for over 100 years and contains the nation's oldest wilderness protection language -- language on which federal wilderness statutes were modeled. It was clearly the intent of the New York State Legislature, then and now, to give the Adirondack Park its highest level of protection.

The New York State Department of Environmental

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Conservation oversees the public lands of the Adirondack Park while private land use is administered by the Adirondack Park Agency. The APA has a long-standing policy regarding the placement of towers on private lands in the Adirondack Park that encourages collocation of facilities to mitigate visual impacts and prevents improper placement of facilities. **These policies, regulations and laws which protect the natural character of the 100-year-old Adirondack Park should not be "preempted."**

The linchpin of the Adirondack region's economy is tourism, with visitors drawn here again and again by the unmatched natural setting. To "preempt" policies, regulations and laws that protect this region's economic well-being and natural resource base is unconscionable. And for what gain? A high-quality picture on a television set? (Visiting the Adirondack Park yields such an abundance of crystal clear natural vistas that one might forget to watch television.) Will this technology be made obsolete in the near future with the advancement of satellite technology, making the proposed proliferation of towers unnecessary?

Thank you for providing the opportunity to comment on this issue of great importance to the Adirondack Park.

Sincerely,



Joseph M. Moore



169 Conduit Street
Annapolis, Maryland 21401
(410) 269-0043 (Baltimore Metro)
(301) 261-1140 (Washington Metro)
(410) 268-1775 FAX
maco @ annap.infi.net

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October 30, 1997

FCC MAIL ROOM

Office of the Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: Landuse Preemption
Docket No. 97-182

Dear Mr. Secretary:

I am writing to advise that the Maryland Association of Counties (MACo) Board of Directors voted today to express its opposition to FCC preemption of local zoning authority. This issue has most recently come to MACo's attention as a result of the above captioned rule making in which preemption of local zoning authority over television and radio broadcast towers is at issue.

MACo has broad concerns with federal intrusion into zoning, which is a traditional local government responsibility. Vesting this authority in other levels of government promotes inefficiencies and denies citizens adequate redress regarding local landuse concerns.

In addition, MACo has specific concerns regarding the proposed rule making including those listed hereafter.

- The FCC has no specific authority in the Telecommunications Act to preempt local zoning.
- The proposed time limits are not realistic, particularly considering the controversy typically arising from tower siting requests.
- The proposal rule is overbroad, including uses beyond digital television towers.
- The proposed rule's denial criteria, "expressly stated health or safety objectives", would require a massive revision of zoning codes.
- Aesthetics are specifically excluded from review criteria.
- Airport safety could be adversely impacted by a compromise of tower siting controls.

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- The FCC will review denial appeals, establishing a national zoning appeals board.
- There has been no factual demonstration of a local government obstacle to the introduction of digital television capability.

MACo urges the FCC to consider MACo's concerns, ultimately concluding that local landuse autonomy is an important principal of Federalism. Any other position would have dire consequences to the autonomy of local government.

Thank you for your consideration.

Yours truly,

A handwritten signature in black ink, appearing to read 'D. Bliden', written in a cursive style.

David S. Bliden
Executive Director

cc: Maryland Congressional Delegation
Marilyn Praisner
Bob Fogel

CITY OF MT. STERLING
145 W. MAIN STREET
MT. STERLING, ILLINOIS 62353

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FCC MAIL ROOM

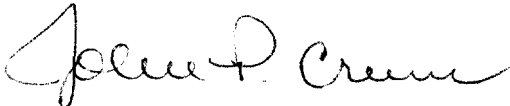
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20544

Re: Comments on Notice of Proposed Rule Making: MM Docket No. 97-182

Dear Mr. Secretary:

It would be a mistake for the FCC to assume preemptive powers over the states and units of local government with regard to the regulation of communication tower location and height. Not only would you likely face defeat before the federal appellate court if this action were taken, but the FCC could cause serious aviation safety problems. The FAA will not place limits on tower height or placement; so, it is up to local and state airport authorities to regulate these structures. The public demands that there be no impediments to aviation safety. These demands are louder and of greater urgency than the arguments of the digital television and other broadcasters that they be allowed to place their towers wherever it may be convenient.

Sincerely,



John P. Crum
Chairman Airport Committee

JPC/pp

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JOHN D. CUTLIP
Interim County Administrator

VIRGIE A. CARTER, CMC
Administrative Assistant/
Deputy Clerk

ELLA W. BROWNING
Administrative Assistant/
Fiscal Officer

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October 27, 1997

The Federal Communication Commission
C/O The Secretary, FCC
Washington, DC 20554

Dear Commissioner:

The purpose of this letter is to express our concern about the proposed FCC rule preempting state and local zoning, as well as land use restrictions on siting, placement, and construction of broadcast station transmission facilities.

Nelson County, Virginia is a rural county located between three urban areas; Charlottesville, Waynesboro, and Lynchburg, Virginia. Our county is fortunate in being a mountainous area with beautiful vistas. We are also fortunate to have the Blue Ridge Parkway traverse along the western boundary of the county. The vistas of our mountains and the Blue Ridge Parkway attract thousands of tourists to the area each year, making tourism a primary source of revenue for the county. Preempting our zoning and land use regulations will result in a number of our high mountains becoming attractive locations for new digital television and FM transmission facilities. Locating these tall towers on mountains in our County in order to serve the urban areas will have a major detrimental impact on the County's vistas and could possibly result in a reduction in revenues received from tourism.

We have recently completed work on drafting a Communication Tower Ordinance to protect the County's mountain ridges. Several cellular phone providers were members of the committee that drafted the ordinance. One major provision of the proposed ordinance is to limit the height of communication towers on mountain ridges to a maximum of thirty-five (35) feet where there is no tree canopy present. The participating cellular communication providers didn't

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have major objections to this requirement. Preempting our zoning and land use regulations for digital television and FM towers will result in cellular communication providers requesting a similar preemption because they must comply with local zoning and land use regulations. The net result will be a proliferation of communication towers on mountain ridges thus destroying the natural beauty of Nelson County, which we are trying to preserve for future generations.

The Board of Supervisors of Nelson County unanimously voted on October 14, 1997, to object your proposed rule which would preempt local and state zoning and land use restrictions on the siting, placement, and construction of broadcast station transmission facilities, and request, that you not adopt this rule.

If you have any questions regarding our decision, or would like additional comments or information, please feel free to contact the Nelson County Administrator's Office at (804) 263-4873.

Sincerely,



John D. Cutlip
Interim County Administrator

JDC/db

cc: Senator John Warner
Senator Charles Robb
Congressman Virgil Goode
Congressman Bob Goodlatte
Board of Supervisors
Fred Boger, Director of Planning & Zoning



"Support Agriculture through Aviation"

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MM 97-182

REED'S FLY-ON FARMING /490 Airport Road, Mattoon, Illinois 61938

Tel.: (217) 234-9439

Fax.: (217) 234-2700

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October 26, 1997

FCC MAIL ROOM

Federal Communications Commission

FCC Dockets Branch

Room 239

Docket no. 97-296

1919 M. Street, NW

Washington, D.C. 20554

Re: Docket No. 97-296

97-182

Dear Sirs:

I have been a pilot for twenty six years and currently own two aviation businesses. The purpose of this letter is to voice my opposition to the NPRM referenced above.

The Federal Communications Commission (FCC) cannot be allowed to preempt state and local zoning ordinances. Towers adversely affect aviation safety, especially near public airports. The only means to prohibit construction of towers near airports are the very zoning ordinances which the proposal will allow the FCC to preempt. While it is true that the Federal Aviation Administration (FAA) must currently endorse proposed tower locations, a federal government agency often cannot recognize the impact or know all the ramifications of tower construction. that is why local and state zoning ordinances are so important.

Private or restricted landing strips are considered a non-entity by the FAA when evaluating a proposed tower site. Consequently, state and local zoning laws are the only protection afforded the owners and users of these small airports. To allow preemption of those ordinances would invite the possibility of unreasonable safety hazards. Many of our U.S. Restricted Landing Areas (RLA) support commercial operations such as aerial application in rural areas. However well intentioned the FCC, a certain percentage of these airports would be negatively impacted.

Digital television may well be the broadcasting future, but an implementation schedule that tramples the rights of the state, local, and individual is not rational. I sincerely urge the FCC to dismiss this NPRM and, instead, revise the implementation schedule to a more reasonable time frame.

Sincerely,

Rick Reed

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FCC MAIL ROOM

MM97-182

ELKHART, INDIANA 46514 • ELKHART MUNICIPAL AIRPORT, 2246 AIRPORT DR. • FAX (219) 264-0915

AVIATION DEPARTMENT

(219) 264-5217 ADM. OFFICE

(219) 264-3168 MAINT. OFFICE

JAMES P. PERRON, Mayor

October 24, 1997

Office of the Secretary
Federal Communications commission
Washington, DC 20554

RE: Request for Comments
47 CFR Part 1

Dear Sir/Madame:

We are writing in opposition to the proposed rule making entitled Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Transmission Facilities. This proposed FCC rule will limit or even negate any authority that the Federal Aviation Administration (FAA), Indiana Department of Transportation - Aeronautics Section, and our local zoning boards will have over transmission towers. It is critical to the safety of our airport facility that there be "checks and balances" to assure that no new obstructions to our airports are developed. By accelerating the review process, unsafe decisions could be made by the FCC, which would mean a loss of utility at our airport!

As the operator of an airport, we are very concerned that this proposed rule will severely limit our ability and the powers of the agencies that we work with to protect our airport from the encroachment of tall towers.

We oppose the proposed rule as it is now written. Recognizing that new technology is requiring the installation of new transmission facilities, we encourage you to find ways to allow the installation of these towers in harmony with the airport facilities that are also critical to our nation's economic health. Giving the FCC preemptive power over state and local zoning would place the interests of DTV implementation ahead of the interests of existing aviation facilities.

Thank you for considering these views as you evaluate this proposed rule.

Sincerely,

Andrew Jones
Airport Authority

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County of Dinwiddie

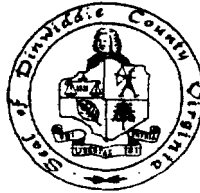
P.O. DRAWER 70

Dinwiddie, Virginia 23841

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EDWARD A. BRACEY, JR.
Vice-Chair

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FCC MAIL ROOM

October 30, 1997

William F. Caton, Acting Secretary
Office of the Secretary, Room 222
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

RE: FCC Rulemaking Docket 97-182

Preemption of local zoning over television and radio broadcast towers.

Dear Mr. Caton:

Recently, our County was advised of the above referenced issue. After reviewing the material available, Dinwiddie County must oppose any rule or regulation which would preempt our zoning ordinance. The purpose of our zoning ordinance is to promote the health, safety and general welfare of our citizens. The ordinance, with amendments, has been in effect for 33 years. It has provided our citizens with guidance on compatible land use districts and permitted uses within those districts.

The Dinwiddie County Zoning Ordinance permits towers within our agricultural, commercial and industrial districts with a conditional use permit (CUP). The period of review required for a CUP (i.e. process application, advertise, hold public hearings) is approximately 75 days. This time frame provides all parties an opportunity to review the request and make an evaluation based on all viewpoints. It is worth noting the following:

1. Dinwiddie County has issued several CUP's for towers within the past five (5) years;
2. Dinwiddie County has not rejected a CUP for a tower; and
3. Approximately 70% of the County area is zoned in a category which would permit a tower.

The purpose of mentioning the above is to illustrate that communities will work with applicants in a reasonable and timely manner in locating towers within its boundaries.

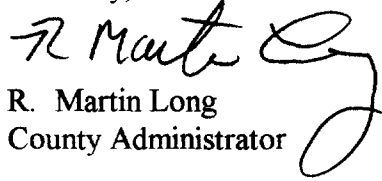
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County of Dinwiddie

In conclusion, any effort to circumvent or limit local authority can not be considered to be in the best interest of its citizens. It is certain to follow that other uses will seek to be excluded from local control if you adopt the current proposal.

Sincerely,



R. Martin Long
County Administrator



United States Department of the Interior

OFFICE OF THE SECRETARY OFFICE OF AIRCRAFT SERVICES

4837 Aircraft Drive
Anchorage, Alaska 99502-1052

In Reply Refer To:

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Office of the Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 2005

Attention: Docket No. FCC 97-182

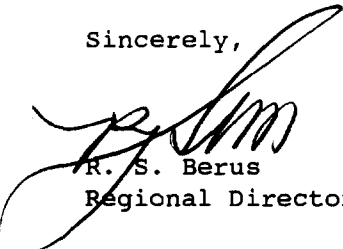
To Whom It May Concern:

The Office of Aircraft Services has a responsibility for aviation safety within the Department of Interior. A large portion of the aviation conducted within the Department of Interior is conducted at flight altitudes of 500 feet or less above the surface.

The Notice of Proposed Rulemaking (NPRM); *Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement, and Construction of Broadcast Transmission Facilities* would certainly not be in the interest of aviation safety to those operations where towers could be installed without approval from those who utilize the airspace for transportation.

Many of the missions for the Department of Interior are for natural resource programs that require low altitude and may be flown in limited visibility. For these reasons, we support the position of the Aircraft Owners and Pilots Association (AOPA), see attached.

Sincerely,


R. S. Berus
Regional Director

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AIRCRAFT OWNERS AND PILOTS ASSOCIATION

421 Aviation Way • Frederick, MD 21701-4798
Telephone (301) 695-2000 • FAX (301) 695-2375
www.aopa.org

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FCC MAIL ROOM

September 29, 1997

Office of the Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 200554

Attention: Docket No. FCC 97-182

To whom it may concern:

The Aircraft Owners and Pilots Association (AOPA) representing over 340,000 aircraft owners and pilots nationwide is opposed to the Notice of Proposed Rule Making (NPRM); *Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement, and Construction of Broadcast Transmission Facilities*. The general aviation community is the largest population of airspace and airport users in the United States and have a significant interest in the safety and efficiency of the National Airspace System(NAS). AOPA strongly opposes this NPRM on the grounds that preemption of state and local zoning laws, ordinances and regulations will result in new hazards to aerial operations, aircraft, and passengers in the United States.

Because of an arbitrary and aggressive implementation schedule, the proponents of Digital Television (DTV) consider state and local zoning as obstacles to their artificially imposed time constraints. For this reason, the industry petitioned the Federal Communications Commission (FCC) for the above referenced NPRM that would essentially circumvent well established state and local zoning protection.

Accelerated implementation of DTV should not be accomplished at the expense of the flying public and it would be an oversimplification to state that current state and local zoning unreasonably delay broadcast facilities construction. (II, Background, .4, page 2-3). Federally mandated "time limits" cannot be enforced nor expected to be complied with in a standardized manner all across the country. The principle as described in the NPRM proposes to remove from local consideration regulations based on the environmental or health effects of radio frequencies emissions, interference with other telecommunication signals, and would also remove from local consideration regulations concerning tower marking and lighting provided that the facility complies with applicable Commission or FAA regulations. As provided for in the NPRM, the proposed changes are related to the health and safety of the flying public (II, Background, .4, page 2-3).

Office of the Secretary
Page 2
September 29, 1997

This proposed rule creates a fundamental conflict of interest within the federal government. The government has established obstruction related standards to ensure public safety on one hand and bypass that same system and its enforceability links with state and local governments on the other, in an attempt to facilitate the implementation of DTV.

The NPRM states that the Commission had the authority to preempt where state or local law stands as an obstacle (III, Discussion, .6, page 3) to the accomplishment and execution of the full objectives of Congress. This creates a conflict of interest when compared to the mandated authority and role that Congress has instituted with the Federal Aviation Administration (FAA) in terms of aviation safety.

The 1996 Telecommunications Act and associated 47 U.S.C. 151 do not justify, mandate or even insinuate that state and local zoning is to be ignored. "To make available, so far as possible..." should not include or be attempted at the expense of aviation safety. Again, 47 U.S.C. 151 "It shall be the policy of the United States to encourage the provision of new technologies and services to the public" certainly does not intend to achieve it at the expense of state and local zoning, especially when it relates to airport and aviation safety. (III, Discussion, .7, page 4). The fact that historically the FCC has sought to avoid becoming unnecessarily involved in local zoning disputes regarding tower placement is illustrative of not only common sense, but also mirrors previous congressional policy (III, Discussion,.8, page 4).

Airports are endangered by constant encroachment of the approach and departure slopes by towers or other vertical obstructions which are impediments to airport safety clearances. Obstructions can be caused by terrain, buildings, towers, and trees or any object that penetrates what can be defined as navigable airspace. Penetrations to navigable airspace may cause unsafe conditions at an airport and may have to be removed, lowered or reconstructed. In many cases, this cannot be accomplished without local and state intervention and guidance, hence the impact of the FCC NPRM.

Since 1928, zoning has been the answer to the problem of airport protection from obstructions. In 1930, the Department of Commerce recommended: "Municipalities and other political subdivisions authorize to do so, exercise the police power in promulgation of properly coordinated zoning ordinances applying equitably to the public airports and intermediate landing fields, and to commercial airports of the public utility class, as well as other land uses."

Office of the Secretary
Page 3
September 29, 1997

This same concern was vividly made public again in 1938 by the Civil Aeronautic Authority (CAA) when it mentioned: "...and, solutions to these problems that have been suggested, there is none as satisfactory, in many respects, as airport zoning." Following federal leadership in this domain, many states since then have adopted legislation authorizing cities and counties to adopt regulations and ordinances limiting the height of structures around airports. By 1941, 31 states had this type of legislation enacted. Many more do today. While things have changed since 1930, they have changed for the better, not for the worse. The federal government position on airport and land use compatibility zoning has been very consistent in the last 60 years.

Today, 49 U.S.C. Section 44718 states, in pertinent part, that "The Secretary of Transportation shall require a person to give adequate public notice...of the construction or alteration, establishment or extension, or the proposed construction, alteration, establishment or expansion, of any structure...when the notice will promote: safety in air commerce, and the efficient use and preservation of the navigable airspace and of airport capacity at public-use airports."

The FAA utilizes Federal Aviation Regulation (FAR) Part 77, CFR 14, "Objects Affecting Navigable Airspace" in an effort to establish standards for determining obstruction to air navigation. In addition to Part 77, the FAA has published documentation of which the purpose is to supplement Part 77. Examples are: Advisory Circular 70/7460-2J "Proposed Construction or Alteration of Objects that May Affect the Navigable Airspace" and Advisory Circular 150/5190-4A, "A Model Zoning Ordinance to Limit Height of Objects Around Airports." These documents are designed to promulgate safety standards.

However, the Federal Aviation Act of 1958, as amended, does not provide specific authority for the FAA to regulate or control how land may be used involving structures or obstructions that may penetrate the navigable airspace. The Federal Aviation Regulations Part 77 only requires "...all persons to give adequate public notice...of construction or alteration...where notice will promote safety in air commerce." The FAA has no power to enforce obstruction standards.

The Advisory Circulars published by the FAA are evidence that the FAA is unable to provide enforcement for situations that arise and have made efforts for the local governments to be informed about the responsibilities they have to establish zoning ordinances.

Office of the Secretary

Page 4

September 29, 1997

By examining the statutes relative to the FAA, we can confirm that there is no specific authorization for federal regulations which would limit structure heights, prohibit construction or even require structures to be obstruction marked and lighted. Congress chose to withhold such authority. Since it would involve federal zoning regulations and due process actions, including the taking of property and the paying of compensation, **the matter was best left with the states and the local authorities.** This federal void is filled by state and local authorities. States and local governments have the responsibility of enacting and enforcing airport-compatible land use.

Given the relative ineffectiveness of the current FAR Part 77 and the advisory nature of the other documentation, it is essential that state and local authorities maintain their ability to adequately regulate tall structures. The FCC NPRM discourages the state and local governments from filling in the federal voids to protect their airports and citizens. We believe that the safety and welfare of persons above and on the ground in the vicinity of airports should be a matter of **coordinated** federal, state, and local concern. The Federal government established the standards and recommendations, the state and local governments enforce them.

AOPA believes that another federal agency (FCC) should not attempt to do what the federal aviation agency cannot in terms of obstruction related aviation matters. The FCC NPRM has serious aviation consequences and therefore cannot ignore those entities (federal, state, and local) that not only have the expertise, but also the legal right to define obstructions that impact on navigable airspace, especially around **their airports.**

To protect the public by preventing properly located and constructed airports from becoming worthless through construction or growth of hazards or obstructions in and around such airports, state and local governments all point to zoning to limit the location and height of structures. A state, county, city, airport authority, corporation or individual can spend large sums of money for very essential public and private purpose of constructing and maintaining an adequate airport, only to have the airport rendered worthless and dangerous almost overnight by the erection of obstructions despite adequate and safe state and local zoning laws and regulations, and violating a myriad of these in the process.

Throughout the nation, local zoning and ordinances are the only means to enforce and limit the height of obstructions to airspace and aerial navigation near airports. AOPA is and has worked with state legislatures to improve existing laws and to establish new ones to limit the construction of tall structures that would be dangerous to aviation.

We also encourage local governments to adopt ordinances and land-use codes that protect navigable airspace, especially in the proximity of airports. This has successfully been achieved in some states where, beyond providing specific guidelines for airport land use compatibility and implementation of airport land use regulations, the state requires permits for any penetration to the FAR Part 77 surfaces. The end result is that local political subdivisions are required to adopt zoning to require a variance for any penetration to the Part 77 and to require appropriate lighting/markings as a condition of such variances. Examples like these represent the best, the safest and most efficient coordinated usage of federal standards, state law, and local ordinances.

While the arrangement between the two federal agencies can be considered a "gentleman's agreement," they both have to face the validity of the airport zoning statutes, which incorporate the basic legal principles which sustain the validity of the zoning. These are now firmly established in the legal jurisprudence of the majority of the states in this nation.

It would be inaccurate to believe that because FAA's Part 77 Regulations and associated processes such as notices of proposed constructions and aeronautical studies are not affected nor mentioned in the NPRM, that the NPRM's impact is non-existent in terms of safety of aerial navigation. This NPRM fails to consider that state and local zoning address and safeguard aerial navigation in cases where FAR Part 77 fails to require FAA notification.

The cases where Part 77 Does Not require FAA notification include:

(1) construction or alteration of LESS than 200 feet, (2) proposed construction of a tower less than 200 feet yet in the vicinity of airports privately owned/operated, (3) objects that are shielded by another object (This may lead to a gradual crawl towards an airport. Each tower is built just a little closer and soon there are 20 of them.), and (4) an addition in height of 20 feet or less to an existing antenna structure.

Furthermore, state and local laws and ordinances are the only protection the flying public has when the towers or obstructions in question are not even considered to be an obstruction under FAR Part 77. The cases where FAR Part 77 Does Not Consider to be an Obstacle are: (1) a height of 499 feet or less and (2) a height of 499 feet when right beside a private use airport.

Office of the Secretary
Page 6
September 29, 1997

Lastly, FAR Part 77 **Does Not** Consider the following in Determining if an Obstacle is a Hazard to Air Navigation: (1) when a VFR flyway is used many times for a week or two per year, yet not consistently on a daily basis, (2) the future form of navigating via direct (Free Flight Concept) is not addressed in the consideration (Off-airways flying is being utilized more now than ever and will be the primary way to navigate within the next 10-15 years), (3) FAR Part 137 Operations, (4) VFR Military Training Routes (MTR) (this is significant to GA because these MTRs are wider than depicted, and when navigating in the vicinity of an MTR, less attention is paid to the obstructions on the ground, it is also more significant now than ever due to the shortage of airspace the military has to utilize training procedures.), (5) any operation conducted under a waiver or exemption to the FAR's (pipeline patrol, power line patrol), (6) high Density Training Areas, (7) raising the Approach minimums at an airport served by only that one approach, and (8) raising a Minimum Obstruction Clearance Altitude (MOCA) to height of the Minimum En route Altitude (MEA) is OK if there aren't any plans to lower the MEA to MOCA height.

As it can be seen in these three instances, the elimination of certain state and local powers to analyze, regulate, and enforce aviation obstructions and zoning issues not only when covered by FAR Part 77, but also when not covered by these same regulations, will result in a loss of accountability for public safety and cripple state and local government's ability to zone themselves.

State and local governments define hazards contrary to public interest by finding that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also may in effect reduce the size of the area available for landing, taking off, and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public and private investment therein. This understanding is the prevailing idea of zoning; to protect and preserve the health, safety and welfare of the communities in question.

If the FCC NPRM is implemented, many airport sponsors across the country will find themselves dealing with a fait accompli. This will prompt FAA's requirements in obstruction standards to be applied in order to mitigate the impact of the obstruction forced upon them at their own cost. These same standards, lacking enforceability to protect the airspace, are depending on state and local laws to be effective, finds themselves useless other than being used for the purpose of now forcing airports to pay for the safety of the flying public. The safety of the flying public was already addressed initially.

Office of the Secretary

Page 7

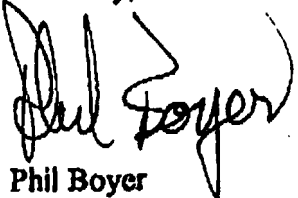
September 29, 1997

If serious constructive consideration is to be given to the petitioners request and intention with regards to DTV, it is imperative that these same entities find alternative and cooperative ways to work with both state and local government and agencies instead of forcing upon them another level of federal use of Commerce Power. This is a very serious matter when it is associated with FCC's tendency to overturn FAA determinations of hazards based on appeals and information submitted by construction proponents. Accelerated implementation of DTV for commercial and business purposes cannot and should not be accomplished at the expense of the safety of the flying public.

The protection of airport approaches from dangerous obstructions is a pressing legal problem. Furthermore, AOPA believes that actual implementation of the requested regulatory changes will undoubtedly and literally create hundreds if not thousands of legal conflicts all across the country. This will not result in faster implementation of DTV in the United States.

We thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Phil Boyer", written over a horizontal line.

Phil Boyer
President

RECEIVED
MARYANNE W. KUSAKA
MAYOR
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October 30, 1997

Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

SUBJECT: MM Docket No. 97-182

In the Matter of Preemption of State and Local Zoning
and Land Use Restrictions on the Siting, Placement
and Construction of Broadcast Station Transmission
Facilities

We have reviewed the subject document and the Petitioners'
Proposed Preemption Rule and have the following comments.

1. The petitioners' request appears to stem from the impending 1999 deadline for implementation of the conversion to digital television (DTV) broadcasting in the top thirty markets. While we do not advocate federal preemption of zoning codes in general, it would appear that if preemption is warranted, it would only be necessary and we would only support it in those markets with such a tight deadline. The 2002 deadline for the remaining commercial market should provide adequate time for standard review processes.
2. We have no comments regarding existing preemptions which the FCC has over local codes regarding the environmental or health effects of radio frequency emissions, interference effects, or the lighting, painting and marking requirements as required for aviation purposes by the FAA and the FCC. However, any additional blanket preemption, such as that proposed in the petitioners' Section (b)(1) may have the effect of broadening the interpretation of the existing standards so as to circumvent other legitimate local concerns or jurisdiction.

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